THE HONOURABLE SRI JUSTICE T.CH. SURYA RAO

AND

THE HONOURABLE SRI JUSTICE G. CHANDRAIAH

W.P. No.11323 of 2002

ORDER: (Per Hon'ble Sri Justice T.CH. Surya Rao)

The instant writ petition is directed against the judgment date 29-04-2002 passed in L.G.C. No.15 of 1997 by the learned Special Court under the A.P. Land Grabbing (Prohibition) Act, 1982 (For short "the Act"), Hyderabad seeking Writ of *Certiorari* to quash the same.

The writ petitioner is the 2nd respondent in the L.G.C. No.15 of 1997. The 1st respondent herein is the applicant,
who filed the application under Section 8 of the Act before the Special Court.

The case of the applicant in brief was that the Society by name Sri Sai Baba Cooperative Housing Society, Hyderabad purchased an extent of Acs.3-00 of land under three different sale deeds with even date 11-01-1979 from the original owners thereof by name Jangaiah, B. Gandaiah and Rajaiah.
The said land is covered by Survey Nos.3 to 5 and 14 part of Yousufguda village, Hyderabad. The Society after purchasing the said land, changed the use of the

land from agriculture to residential, prepared a layout by dividing the entire land into plots obtaining the necessary permission from the competent authorities on 18-12-1981 and paid betterment charges.
As per the said layout, there are 32 plots. All the 32 plots were allotted to the members of the Society.

The applicant being a member of the Society, was allotted Plot No.31 and the same was sold by means of a registered sale deed dated 22-03-1984. The applicant could not construct the house thereon immediately, as in case of others, as he was an employee and was on frequent transfers. The respondents, who are backed up by rowdy elements, unlawfully and without any manner of right or title are trying to raise pillars on the Western portion with frontage of 29 feet on the North in an area of 139 square yards and the respondents raised temporary huts in the rest of the area. This was done with a deliberate attempt to grab the plot belonging to the applicant. The applicant gave a police complaint and when there was no action, he filed the application before the learned Special Court.

Initially, the application was filed against the sole respondent, later the writ petitioner was impleaded as a party thereto. The case of the writ petitioner as mentioned *inter alia* in his counter was

that the application schedule plot is not within the boundaries of the land purchased by the Society through whom the applicant has been claiming that he purchased the land with the premises bearing No.8-3-244/33/B/1 with its appurtenant land admeasuring 135 square yards covered by Survey No.3 of Yousufguda village from one Smt. T. Ramanamma through a registered sale deed dated 07-06-1996 for valuable consideration, that Smt T. Ramanamma, in turn purchased the said property from one B. Jangaiah under a deed of agreement of sale dated 11-07-1970, which was attested by a notary public and possession was also delivered to said Smt. T. Ramanamma on the same day, that the said agreement was later impounded by the Collector and necessary stamp duty and penalty were levied. That even assuming without admitting that the respondent's property is covered in the application schedule land, Jangaiah, who is her vendor's vendor, illegally and unauthorisedly sold to an extent of Ac.1-00 forming part of Survey Nos.3, 4 and 5, which includes his plot, in favour of Sri Sai Baba Cooperative Housing Society and the same does not confer any title to the said Society, in so far as title is concerned. It is his further plea that

he perfected his title by means of adverse possession.

On the above pleadings, the Special Court framed the issues as under:

> "1) Whether the applicant has title to the application schedule property, if so, whether the title is valid as per the provisions of Act 33 of 1976?
>
> 2. Whether the title set up by the second respondent is true and valid?
>
> 3. Whether the respondents are land grabbers within the meaning of the Act?
>
> 4. Whether the second respondent prescribed title by means of adverse possession?
>
> 5. Whether R-1 is proper and necessary party?
>
> 6. To what relief?"

At the time of enquiry, two witnesses were examined on the side of the applicant and Exs.A-1 to A-16 were got marked. Four witnesses were examined on the side of the

2nd respondent, including R-1 as R.W.-1, and Exs.B-1 to B-11 were got marked. Commissioner was examined as C.W.-1 and Exs.C-1 to C-4 were got marked. Exs.X-1 and X-2 were got marked by the consent of the parties.

Appreciating the evidence thus adduced, both oral and documentary, learned Special Court was of the view that the applicant had title to the application schedule property and the title set up by the 2nd respondent was not true and valid. On the issue of adverse possession, the learned Special Court observed that no evidence whatsoever was adduced. Eventually the learned Special Court was of the view that the respondents were the land grabbers. As aforesaid,
the judgment is now being assailed before us.

Sri K.R. Raman, learned counsel appearing for the writ petitioner, represents that the learned Special Court lacks jurisdiction to adjudicate the dispute, inasmuch as, there has been no plea nor evidence to the effect that the writ petitioner was a land grabber and in fact, grabbed the land. Learned counsel further represents that the land in question falls out side the layout of the Society and is distinct and separate from plot No.31 alleged to have been purchased by the applicant and the report of the Commissioner was vague and shall have to be jettisoned.

Sri K.V. Reddy, learned counsel appearing for the 1st respondent/applicant, seeks to sustain the judgment of the learned Special Court.

From the competing claims, it is obvious that the crux of the dispute seems to be precisely that the land in question is within or without the layout of the Society.

It may be mentioned at the out set that the original owner of the land in question was one Jangaiah is not in dispute from the respective pleas taken by the parties.

Both of them claimed that they had purchased the land in question from the said Jangaiah, through, of course, different sources. While it is the case of the applicant that Jangaiah and two others purchased the land covered by Survey Nos.3 to 5 and part of Survey No.14 by means of three different registered sale deeds in favour of the Society, which in turn divided that land into plots and sold one such land to the applicant/respondent, it is the case of the 2nd respondent that the land in question was purchased by him from

Smt. T. Ramanamma by means of a registered sale deed and his vendor in turn purchased the land under an agreement of sale from Jangaiah and stamp duty and penalty were paid before the Collector in respect of that agreement of sale. Having regard to the evidence adduced on either side,

the learned Special Court *suo motu* appointed the Assistant Director, Survey and Land Records

(Headquarters),
as Commissioner. Pursuant to the warrant issued to him,
the Commissioner visited the land in dispute, in the presence of both the learned counsel representing the parties, executed the warrant and submitted his report along with a plan. The Commissioner, in this case, was examined as C.W.-1. Earlier objections seem to have been filed by the writ petitioner assailing the report of the Commissioner. Eventually the learned Special Court considered the evidence of C.W.1 and the report of the Commissioner, Ex.C-2, and having considered the same, it was of the view that the land in dispute is within the layout plan of the Society.

That the land covered by Survey Nos.3 to 5 and part of 14 was purchased by the Society by means of three different registered sale deeds under Exs.A-7 to A-9 is beyond doubt. Whatever may be the plea, *qua* clearly through these documents a valid title has been passed in favour of the Society from the original owners thereof namely Jangaiah and two others. Ex.A-1 is the title deed under which the applicant is said to have purchased from the Society. P.W.-2 is the Secretary of the Society, in his evidence categorically deposed that the Society allotted the land in question to the applicant and executed the relevant sale deed

in Ex.A-1, in favour of the applicant. Thus *prima facie* title of the applicant has been clearly established. In view of the clinching evidence of P.W.2 coupled with Exs.A-7, A-8 and Ex.A-1, *prima facie* title of the applicant can clearly be seen at this juncture. In view of the same, and in view of Section 10 of the Act the presumption of law shall have to be drawn that the respondent is a land grabber until and unless the respondent seeks to rebut the presumption by adducing cogent evidence in proof of his plea. The plea of the respondent as stated hereinabove is that *firstly*, the land in dispute is beyond the layout plan of the Society and *secondly*, that he purchased the said land from one Smt. T. Ramanamma, who in turn purchased the land from Jangaiah the original owner. Alternatively without admitting the claim of the applicant, the respondent takes up a plea that Jangaiah, his vendor's vendor, illegally and unauthorisedly sold an extent of Ac.1-00 of land covered by Survey Nos.3, 4 and 5 which includes the respondent's plot in favour of the Society and the same would not confer any title to the said Society. At the end, the 2nd respondent has taken the plea that at any rate, by means of long possession he perfected his title by adverse possession. In support of the said plea, he filed Ex.B-1 notarised agreement of sale in favour of Smt. T. Ramanamma dated 11-07-1970. He

filed Ex.B-3, registered sale deed executed by the said Ramanamma in his favour. Thus the 2nd respondent/writ petitioner is tracing his title through Exs.B-1 and B-3. Ex.B-1, which is obviously an agreement of sale, does not confer any title in favour of the respondent's vendor Smt. T. Ramanamma. It is settled by now that title can pass only through a registered document executed in accordance with the provisions contained in Section 54 of the Transfer of Proper Act, 1882. That apart, an agreement of sale will not confer any title, being only mere contract of sale. As things stand, title deed in favour of the respondent's vendor by name Smt. T. Ramanamma, Ex.B-1, therefore cannot defeat the title in favour of the Society. The plea of the 2nd respondent taken alternatively *inter alia* in his counter that Jangaiah unauthorisedly sold an extent of Ac.1-00 of land covered by Survey Nos.3, 4 and 5 in favour of the Society, for the above reasons merits no consideration. The respondent's vendor, who claimed to have purchased the property from Jangaiah under Ex.B-1 agreement of sale, did not take any action by filing the suit for specific performance to obtain the necessary sale deed from the executant of the agreement, Ex.B-1. Therefore, she cannot claim any valid title from the original owner. Consequently, Ex.B-3 will not confer any title on the 2nd

respondent/writ petitioner.

This, then takes us to the next plea that whether the property in dispute is within the layout of the Society or not.

It may be mentioned herein for brevity and better understanding of the matter that there has been no dispute with regard to the identity of the property in dispute.

The application schedule land, which is the property in dispute is claimed to have purchased by the applicant on the one hand and by the 2nd respondent on the other hand.

The dispute seems to be that whether this application schedule land is within the layout of the Society or not.

On this point, the evidence of C.W.-1, besides the evidence of P.W.-2, Secretary of the Society, is germane for consideration. The evidence of C.W.-1 shows that he executed the warrant and submitted his report duly answering the issue raised on either side by giving work memos. In the report *inter alia* it has been mentioned clearly by the Commissioner that he verified Exs.A-7 to A-9 and A-12 to A-14 and found that the land covered by the layout plan, Ex.X-1, is within the limits of the property purchased through the registered documents Exs.A-7 to A-9. From this observation made *inter alia* in the report, it is obvious

that the land sold by the Society in Ex.A-7 to A-9 is the very land for which the Society prepared the layout. The next question relevant in the context is whether the application schedule land is within the layout or not. The report of the Commissioner further shows that Plot No.31 is within the limits of Ex.X-1. While answering the points raised, the Commissioner in his report *inter alia* mentioned *qua* point No.1 that plot No.31 identified on ground with reference to Ex.X-1 is a residential plot covered by house and open place with a compound wall. *Qua* point No.2 it has been mentioned that the land purchased in Survey Nos.3, 4, 5 and 14 part of Yousufguda village as per Exs.A-7 to A-9 and Exs.A-12 to A-14 is identified with the layout plan of Sri Sai Baba Cooperative Housing Society. *Qua* point No.3 it is mentioned that the layout prepared in Ex.X-1 is within the limits of the boundary mentioned in Exs.A-7 to A-9 and Exs.A-12 to A-14. It is sought to be commented upon *qua* the report of the Commissioner on the premise that the Commissioner has not made any attempt to measure the extent of the land covered by individual Survey Nos.3 to 5 and the Commissioner has been swayed by the identifications made by the applicant without making any attempt to identify the same independently. These two objections raised against the report of the Commissioner merit no consideration, for the reasons

that there is no need to measure the individual extents covered by Survey Nos.3 to 5. The extent covered by those three survey numbers being the subject matter of the sale under Exs.A-7 to A-9, and one layout plan for the entire extent of the land covered by those survey numbers as admittedly prepared, by taking measurements of individual survey numbers in no manner the dispute in controversy can be elucidated. The title of the Society over the land purchased by it in Ex.A-7 to A-9 and the layout prepared by it by dividing the said land into 32 plots as discussed hereinabove is beyond doubt. Even the contention of the 2nd respondent that Jangaiah could not have sold the land to the Society, having sold the land by means of agreement of sale in favour of Smt. T. Ramanamma,

for the reasons discussed hereinabove cannot be countenanced. Therefore, the first objection sought to be raised *qua* report of the Commissioner merits no consideration. Apropos the second objection, it may be reiterated here that the identity of the land in dispute between the parties *inter se* is beyond doubt. The land is one and the same but the parties claim their independent title *qua* the said land. Therefore it matters little even if it is shown by the respondent or the applicant to the Commissioner. It is nobody's case that the applicant had shown to the Commissioner a

different land at the time of the execution of the warrant. The question that precisely falls for consideration is whether that land,
which is in dispute, is within the layout or not. In that view of the matter, even the 2nd objection raised *qua* the report of the Commissioner is quite irrelevant and merits no consideration. The report of the Commissioner coupled with the evidence given by C.W.-1 clearly shows that the land in dispute is within the layout. The other discrepancy pointed out as regards the measurement, shape of the plot and inconsistency in the three applications submitted by the applicant are quite irrelevant having regard to the main controversy between the parties *inter se.* Thus the evidence adduced, which is available on record, clearly shows that the application schedule land, which is in dispute between the parties *inter se*, is covered by Ex.X-1, layout, and the land covered by Ex.X-1 is the subject matter of the sale in favour of the Society by the original owners namely Jangaiah and two others.

The 2nd respondent failed to prove his title *qua* the land in dispute inasmuch as, his vendor has no title to the said land.

This then takes us to consider the main thrust of the contention on the side of the writ petitioner about the jurisdiction of the Special Court. It is the

contention of the learned counsel that there has been no specific averment in the application *inter alia* that the 2nd respondent has grabbed the land and he is a land grabber nor any evidence adduced in regard thereto. The Special Court constituted under the Act is the Forum, which is expected to try the cases pertaining to the act of land grabbing. It gets jurisdiction obviously only when there has been allegation of land grabbing. *De hors* the same the dispute squarely falls within the domain of the Civil Court is the settled law. Keeping the same in view, it is to be seen whether the necessary foundation has been laid in the application averring specifically the act of land grabbing.

In the concise statement appended to the application filed in Form No.1 while tracing about the title, it has been averred thus: "The respondent backed up by rowdy elements,

as unlawfully and without any manner right or title is trying to raise pillars on the Western portion with frontage of 29 feet on the North in an area of 139 square yards, and has raised temporary huts in the rest of the area. This is done with a deliberate attempt to grab the plot belonging to the petitioner."

The application has been filed obviously seeking relief of possession from the respondent. The contention seems to be that the original application having been

filed against the sole respondent No.1 and when he pleaded that he had nothing to do with the land in dispute, the 2nd respondent was impleaded and having impleaded the 2nd respondent as a party to the application, no specific plea has been taken against him. Learned counsel for the applicant, at this juncture, represents that the name of respondents 1 and 2 is identical but the surname differs. Initially, the 1st respondent was impleaded when he was found at the land in dispute undertaking the alleged land grabbing activities. When he pleaded that he had nothing to do with the land,

the 2nd respondent was impleaded and therefore the specific averments made, *inter alia,* in the application would specifically refer the act very much concerned with the activity of the land grabbing. We see sufficient force in the contention of the learned counsel that there is specific plea in the application, which dates back to the proceedings unless there is substantial change *qua* newly added party in the plea, the plea *proprio vigore* applies to him. That apart, after the 2nd respondent has been added as a party and filed his counter, a rejoinder has been filed by the applicant. In the rejoinder, it is specifically averred that there has been collusion between the 1st and 2nd respondents for the purpose of grabbing the land of the applicant and both of them, as understood by the

petitioner, are acting as per the original *modus operandi* of the land grabbers to escape from the consequences and wrath of the L.G.C., and having completed the construction of the building the respondents,
in collusion, are taking false pleas with ulterior motives.
This clearly answers the question sought to be raised by the learned counsel for the respondent/writ petitioner. Obviously, the respondent is in occupation of the land in dispute, which is the application schedule land. He claims to have been in possession of the same and in fact, the plea of the prescription of title by means of adverse possession takes away the question of the land in dispute.

The legal position has been clearly laid down by the two judgments of the Apex Court and following the same by a few judgments of this Court rendered by a coequal bench.
It is nothing but reiteration of the essential ingredients that constitute the activity of the land grabbing. As can be seen from Clauses (d) and (e) of Section 2 of the Act,
both the provisions read together clearly show that the land in question must be taken unauthorisedly and without any lawful entitlement thereto and with a view to taking illegal possession thereof or to construct a

building thereon or such other acts as are clearly enumerated *inter alia* in Clause (e) of Section 2 of the Act. These are three essential ingredients that constitute the land grabbing, as can be seen from Clauses (d) and (e) of the Act. That is, in fact, the essence of the judgment rendered by the Apex Court and by this Court, following those judgments. It is not expedient nor desirable to burden our judgment by quoting those judgments. Having regard to the clear legal position, the plea taken by the applicant and evidence adduced in support thereof, is if scanned it is obvious that a clear title has been set up by the applicant in himself and it is alleged that this land has been unauthorisedly occupied without any entitlement thereto and with a view to construct illegal constructions thereon. These three ingredients are clearly discernible from the plea as well as the evidence, therefore the question of jurisdiction sought to be raised by the learned counsel equally merits no consideration.

For the above reasons, we are of the considered view that there are no compelling circumstances for us to arrive at a different conclusion than what has been arrived at by the learned Special Court. In that view of the matter, we see no illegality or error of jurisdiction that has been committed by the learned Special Court,

and therefore, it does not warrant any interference by this Court under Article 226 of the Constitution of India.

For the above reasons, the Writ Petition fails and is dismissed with costs.

_____

T. CH. SURYA RAO, J

Date: 29-11-2006

_____

G. CHANDRAIAH, J

LSK